IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2440 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE UNAIDED B.ED./ B.P.ED.COLLEGE MANAGEMENT ASSO

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2440 of 2005

MR MITUL K SHELAT for Petitioner No. 1

MR KAMAL TRIVEDI, ld Additional Advocate General for Respondent No. 1

MR DIPAK R DAVE for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 12/05/2005

ORAL JUDGEMENT

#. In this petition under Article 226 of the Constitution of India, the petitioner - Gujarat State Unaided B.Ed./B.P.Ed. College Management Association, Ahmedabad has prayed for appropriate writ, order or direction in the nature of mandamus, declaring that the members of the petitioner are entitled to grant admission in the seats in their respective colleges in terms of the judgments rendered by the Hon'ble Supreme Court in the matter of T.M.A.Pai Foundation V/s State of Karnataka, reported in (2002) 8 SCC 481 and Islamic Academy of Education and another V/s State of Karnataka, reported in (2003) 6 SCC 697.

#. During the pendency of the present petition, by resolution dated 31.03.2005, the State Government had fixed the management quota to the extent of 15% and therefore by way of amendment, the petitioner has also challenged the said resolution dated 31.03.2005.

#. Initially, while issuing rule, the learned single Judge of this Court granted ad-interim relief in terms of para 12(D), by which respondent no. 3 was forbeared from restraining the petitioner association from holding common entrance test for granting admission against 15% seats in their particular college and restraining them from any manner filling up 15% seats in the respective college. However, subsequently on the oral statement on behalf of the petitioner association, the process of inviting applications considering ad-interim relief in terms of para 12(D) was stopped.

#. The aforesaid Special Civil Application came to be heard on 08.04.2005 and without prejudice to the rights and contentions of the parties and with a view to find some way and solution and considering para 19 of the judgment of the Hon'ble Supreme Court in the case of Islamic Academy of Education (supra), the petitioner association was directed to move appropriate application before Justice R.J.Shah Committee and put forward their case with regard to higher percentage of management quota and the petitioner was directed to submit appropriate application by 11.04.2005 and put forward their case for higher percentage of management quota and on receipt of the same, Justice R.J.Shah Committee was directed to take appropriate decision after giving opportunity to the petitioner Association as well as State Government, as early as possible, preferably within a period of three weeks from the date of receipt of such proposal. The matter was adjourned to 03.05.2005 and on 03.05.2005, it was reported that the hearing has been kept on 06.05.2005 and therefore, the matter was adjourned to 06.05.2005.

#. Today, when the matter is called out, affidavit-in-reply was filed on behalf of Justice R.J.Shah Committee, in which it is stated that in pursuance of the direction of this Court dated 08.04.2005 the petitioner Association made representation to the Committee, by letter dated 15.04.2005 and it is the case of the Committee that as per the request made by the Association on 19.04.2005, the Committee afforded opportunity of hearing to the petitioner Association and also directed the association to inform all the members of the association to appear before the Committee on 28.04.2005, along with documents mentioned in the year dated 21.04.2005 of the Committee. It is further submitted that though opportunity was provided to the members of the Management Association of B.Ed./B.P.Ed colleges and certain documents have been called for respective colleges did not appear before the committee in the hearing on 28.04.2005 and therefore the hearing was adjourned to 06.05.2005, with a view to give one more opportunity to the members of the petitioner Association. It is further submitted that on 06.05.2005 also, though individual institutions were asked to file affidavit stating that they have collected fees from the students at the rate which was duly fixed by the fee committee neither affidavits nor information was submitted before Committee. It is further submitted that certain further particulars are also sought and as the particulars as sought are not submitted, the Committee decided that the plea of the association for enhancement of the management quota can be considered only when the individual affidavits as sought for are filed by the institutes. Today, when the matter is heard, Mr.A.D.Oza, learned advocate appears for Justice R.J.Shah Committee and has submitted that Committee has received particulars only from 35 institutes which is disputed by Mr.N.D.Nanavaty, learned senior advocate appearing on behalf of the petitioner Association. According to him, as per his instruction, 79 institutes have submitted the particulars which, according to them, are relevant. It is also his case that certain particulars which are asked for by Justice R.J.Shah Committee are not necessary for the purpose of determining the Management quota.

#. Without entering into the controversy as to how many institutes have submitted the particulars, if any of the institutes have not submitted the particulars sought by Justice R.J.Shah Committee, they may provide the same on or before 18.05.2005. Shri Nanavaty has submitted that there are some particulars which are not necessary for the purpose of determining the management quota and only

those particulars will be submitted, which according to them, are relevant for the purpose of deciding the management quota and whatever particulars which are required for the purpose of determining the management quota, which according to them, are submitted and will be submitted. Mr.Oza has submitted that the institutes are required to submit all the particulars which are sought for by the Justice R.J.Shah Committee as according to him, they are necessary for the purpose of determining the management quota. Without entering into the said controversy when the petitioner association has submitted that they will be producing necessary particulars which according to them are necessary for the purpose of determining the management quota, in that case, the Committee can decide and determine the management quota, considering the representation submitted by the petitioner Association and on the basis of the material already produced and /or that may be produced on or before 18.05.2005 can take appropriate decision on the same. If the Committee is of the opinion that certain particulars are not submitted which, according to them, are necessary for the purpose of determination of the management quota, in that case also, the committee can make note of the same in their decision and shall take appropriate decision. Considering the facts and circumstances of the case and looking to the urgency, the committee is directed to take appropriate decision on the representation submitted by the petitioner association for enhancement of the management quota, as early as possible, preferably within a period of two weeks from 18.05.2005 and communicate the outcome of the same to the petitioner association. In the meantime, it will be open for the petitioner association and their members institutes to give admission in B.Ed./B.P.Ed. to the extent of 15% management quota as determined by resolution dated 31.03.2005, as even otherwise, each institution is permitted to give admission upto 15% of the management quota. If ultimately, percentage are increased and / or percentage are varied then, further admission can be given on the basis of the decision that may be taken by Justice R.J.Shah Committee from the applications which are already invited.

#. With the aforesaid directions and observations, the present petition is disposed of. It will be open for the petitioner to challenge the decision that may be taken by Justice R.J.Shah Committee on the representation submitted by the petitioner association for enhancement of management quota in accordance with law and permissible under the law. This Court has not expressed any opinion on merits and whether the petition against the decision of the Committee is maintainable or not

either in favour of the petitioner or against the petitioner and the said question is kept open. Rule is discharged. No costs. Ad-interim relief stands vacated forthwith.

#. In view of the above order, no order in Civil Application No.2806 of 2005. Disposed of accordingly.

(M.R.Shah,J)

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